

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ZELLA MAYE FREEMAN,  
Plaintiff,  
v.  
CITY OF FRESNO, R. GARRISON  
(F.P.D. Badge No. 780), MARK  
A. YEE (F.P.D. Badge No. 692),  
J. CAPRIOLA (F.S.O. Badge No.  
7622), I. BARRIMOND (F.S.O.  
Badge No. 1153), J. HOLLINS  
(F.S.O. Badge No. 2346), R.  
PEREZ (F.S.O. Badge No. 6169),  
A. SIMONSON (F.S.O. Badge No.  
9364), inclusive,  
Defendants.

1:05-CV-00328 OWW SMS

MEMORANDUM DECISION AND ORDER  
DENYING WITHOUT PREJUDICE  
PLAINTIFF'S MOTION FOR HEARING  
REGARDING PROBABLE CAUSE

## 1. INTRODUCTION

Plaintiff Zella Maye Freeman ("Freeman") moves for a hearing "regarding probable cause for issuance of a search warrant."<sup>1</sup> Defendants oppose.

## 2. PROCEDURAL BACKGROUND

Freeman filed her complaint on March 8, 2005. (Doc. 1, Complaint.) After an order was issued granting in part and denying in part Defendants' motion to dismiss on June 8, 2005,

<sup>1</sup> This motion is not typically brought in a civil proceeding but rather in criminal proceedings. The issue in this motion is more properly addressed on the merits on a motion for summary judgment.

1 Freeman filed a first amended complaint. (Doc. 24, First Amended  
2 Complaint ("FAC"), Filed June 28, 2005.) On July 7, 2005  
3 Defendants J. Capriola ("Capriola"), I. Barrimond ("Barrimond"),  
4 R. Perez ("Perez"), and A. Simonson ("Simonson") filed an answer  
5 to Freeman's FAC. (Doc. 25, Answer to Amended Complaint by  
6 Capriola, Barrimond, Perez, and Simonson.) On July 27, 2005  
7 Defendants City of Fresno, Mark A. Yee ("Yee"), and R. Garrison  
8 ("Garrison") also filed an answer to Freeman's FAC. (Doc. 26,  
9 Answer to Amended Complaint and Demand for Jury Trial by City of  
10 Fresno, Yee, and Garrison.) Freeman then filed a "motion for  
11 probable cause hearing regarding search warrant." (Doc. 50,  
12 Motion for Hearing, Filed June 30, 2006.) Defendants filed an  
13 opposition to Freeman's motion for probable cause on July 14,  
14 2006. (Doc. 55, Memorandum in Opposition re Motion for Probable  
15 Cause "Opposition".)

16 **3. FACTUAL HISTORY**

17 **A. Background of Case**

18 Freeman alleges that on February 19, 2004, at around noon,  
19 City of Fresno and Fresno County peace officers, who were members  
20 of the Multi-Agency Gang Enforcement Consortium ("M.A.G.E.C.")  
21 unit, "demanded entry into [her] residence, threatening to shoot  
22 [her] if [she] did not open the door." (Doc. 24, FAC). Freeman  
23 was babysitting three children, all under five years of age, at  
24 the time. Freeman alleges she suffered injuries, both physical  
25 and mental, as a result of the invasion. She alleges the course  
26 of events as follows:

27 1. Defendants came to Plaintiff's front  
28 door demanded entry into Plaintiff's  
residence, and threatened to shoot

1 Plaintiff if she did not open the door  
2 quickly enough.

3

2. After moving the minor children away  
3 from the door, Plaintiff opened the door  
4 under great physical, emotional, and  
mental duress.

5

3. Defendants without Freeman's permission  
6 then invaded her residence, with their  
7 weapons drawn. Garrison violently  
knocked Freeman onto the floor and  
Garrison, Perez, and Simonson trampled  
upon her person.

8

4. Freeman was extremely concerned about  
9 the safety of the minor children in her  
care.

10

5. Garrison, in callous disregard of the  
11 injuries Freeman sustained, ordered her  
12 to quickly stand up, under threat of  
force. Freeman was unable to stand up  
on her own.

13

6. Defendants searched Plaintiff's  
14 residence, detained her under threat of  
15 force and seized Plaintiff's son's  
16 locked safe, as well as Plaintiff's  
registered .32 caliber handgun, which  
she lawfully owned.

17

7. Defendants did not show Freeman a search  
18 warrant pertaining to said search of her  
residence.

19

8. At the time of the above-mentioned acts,  
20 Defendant City of Fresno, had a policy  
and custom of negligently hiring,  
21 training, and supervisong it's officers  
who were assigned to work as part of,  
and in support of, the M.A.G.E.C. unit.

22

9. On August 17, 2004, Plaintiff submitted  
23 a Claim for Damages, which claims was  
24 denied by Defendant City of Fresno, as  
"insufficient" with leave to amend.  
Thereafter, on September 7, 2004  
25 Plaintiff presented an Amended Claim for  
Damages for an "Unlimited" amount to  
26 Defendant City of Fresno. (Doc. 24,  
Exhibit A.) On September 9, 2004,  
27 Defendant City of Fresno, rejected  
Plaintiff's amended claim in its  
entirety and advised Plaintiff that she

had six months within which to file a lawsuit.

(Doc. 24, FAC.).

B. Freeman's Request for Hearing on Probable Cause

On June 30, 2006, Freeman moved for a Hearing to determine whether probable cause existed for the issuance of the underlying search warrant in this case. (Doc. 50, Motion for Hearing.) Plaintiff alleges that Detective Yee's affidavit<sup>2</sup> dated February 17, 2004 in support of the warrant does not contain sufficient facts to establish the finding of probable cause that would justify a "crisis entry" search of Freeman's residence. (*Id.*) Freeman's attorney provided a declaration stating that the facts in the affidavit are insufficient to establish probable cause. (*Id.*, Declaration Wesley E. Stupar.)

## 4. DISCUSSION

Freeman moves for a hearing to determine whether probable cause existed for the issuance of the underlying search warrant in this case. Freeman alleges that Detective Yee's affidavit dated February 17, 2004 in support of the warrant does not contain sufficient facts to establish the finding of probable cause that would justify a "crisis entry" search of Freeman's residence. Freeman does not provide the court with a copy of the affidavit. Freeman only includes a declaration from her attorney concluding that the facts in the affidavit are insufficient to establish probable cause. Further, Freeman argues that she is entitled to an evidentiary hearing to challenge the validity of

<sup>2</sup> A copy of Yee's affidavit was not provided and is nowhere found in the record.

1 the search warrant.<sup>3</sup>

2 Federal Rule of Civil Procedure 56(c) provides for summary  
3 judgment when the pleadings, depositions, answers to  
4 interrogatories, and admissions on file, together with the  
5 affidavits, if any, show that there is no genuine issue as to any  
6 material fact and that the moving party is entitled to judgment  
7 as a matter of law. Fed. R. Civ. P. 56(c); *Lessard v. Applied*  
8 *Risk Mgmt.*, 307 F.3d 1020, 1023 (9th Cir. 2002); see also  
9 *Williams v. County of Santa Barbara*, 272 F.Supp. 2d 995, 1003-  
10 1004 (C.D. 2003) (internal quotations omitted). The moving party  
11 bears the initial burden of demonstrating the absence of a  
12 genuine issue of material fact for trial. *Fairbank v. Johnson*,  
13 212 F.3d 528, 531 (9th Cir. 2000); see also *Williams*, 272 F.Supp.  
14 2d at 1004. A fact is material if it could affect the outcome of  
15 the suit under the governing substantive law. *Id.* The burden  
16 then shifts to the non moving party to establish beyond the  
17 pleadings that there is a genuine issue for trial. *Id.*

18 It is unclear whether Freeman's attorney mistakenly intended  
19 to file this motion that applies in a criminal case. The issue  
20 of the accuracy and sufficiency of the affidavit to establish  
21 probable cause for the underlying arrest warrant raises mixed  
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23       <sup>3</sup> Freeman cites to *Franks v. Delaware*, 438 U.S. 154 (1978),  
24 a criminal case, for the proposition that she is entitled to an  
25 evidentiary hearing to challenge the validity of the search  
26 warrant. *Franks* does not apply to this civil proceeding as it  
27 involves a criminal proceeding where the Fourth Amendment  
28 requires that a hearing be held to challenge the truthfulness of  
factual statements made in the affidavit where there is a showing  
that the affidavit was based on falsity or bad faith omissions of  
relevant information. *Franks v. Delaware*, 438 U.S. at 155-156.

questions of fact and law. In this civil action nothing prevented Plaintiff from deposing affiant about the affidavit. Freeman bears the burden of showing that there is no issue of material fact as to the existence of probable cause based on the underlying affidavit. Discovery is closed in this case. Plaintiff offers no explanation for failing to conduct the necessary discovery.

## 5. CONCLUSION

This motion for a hearing to determine probable cause for the arrest warrant is **DENIED**.

**SO ORDERED**

Dated: August 30, 2006 /s/ OLIVER W. WANGER

OLIVER W. WANGER  
United States District Judge